

Before the
Federal Communications Commission
Washington, D.C. 20554

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FILE
Federal Communications Commission
Office of the Secretary

In the Matter of)

MODIFICATION OF COMPARATIVE)
POLICY STATEMENT)

MM DOCKET NO. LM 7739

Treated As "Petn for Rulemaking"

To: Chief, Mass Media Bureau

PETITION FOR RECONSIDERATION

Gerald Proctor ("Proctor"), by his attorneys, pursuant to Sections 1.106 and 1.429 of the Commission's rules, hereby seeks reconsideration of the Commission's August 17, 1987 letter action dismissing Proctor's petition for rulemaking. In support of his position, Proctor submits the following:

In an April 27, 1987 petition for rulemaking, Proctor proposed modification of the Commission's Policy Statement on Comparative Broadcast Hearings, 1 FCC 2d 393 (1965) ("Comparative Policy Statement") to award a comparative preference in a licensing hearing to that individual or group which successfully petitioned for allocation of a channel to the Commission's Tables of Allotments. In support of his petition, Proctor demonstrated that, by awarding comparative credit to rulemaking petitioners, the Commission would encourage the expansion of broadcast service to the public, much the same way that the Commission presently encourages the installation of standby auxiliary power sources by new broadcast applicants by awarding such applicants special comparative credit at hearing. Further, having demonstrated their interest and willingness to bring service to their chosen

communities by initiating and successfully prosecuting often time consuming and expensive rulemaking proposals, there is an especially strong likelihood that such petitioners will operate their broadcast stations in a manner which advances the public interest.

The Commission dismissed Proctor's rulemaking proposal, in main part, because of its "similarity" to an unsuccessful rulemaking petition filed by Eric Hilding in connection with MM Docket No. 84-750. However, as pointed out in Proctor's petition for rulemaking (but ignored by the Commission), there are major differences between Proctor's proposal and that advanced earlier by Eric Hilding. Mr. Hilding sought to exempt rulemaking petitioners from comparative challenge. Thus, no comparative hearing could be held. The Commission correctly concluded that such a scheme would deprive the FCC from being able to select the best possible applicant. FM Application Processing, 59 RR 2d 100 (1985).

Under Proctor's proposal, on the other hand, the rulemaking petitioner would still be judged on a comparative basis with all other qualified applicants. The Commission would still conduct a hearing to select the best applicant for each community. The only change from the present scheme would be that one additional factor would be thrown into the comparative mix.

Proctor's proposed scheme strikes the appropriate balance between the public interest goals of selecting the best applicant and bringing service to the public as expeditiously as possible. In fact, these public interest objectives need not be mutually

exclusive. The Commission on numerous occasions has noted the importance of expanding service to the public. See e.g. Modification of FM Broadcast Licenses, 60 RR 2d 114, 118 (1986) (Commission provides incentive to licensees to expand service through channel upgrades by excluding competing expressions of interest); FM Application Processing, 58 RR 2d 776, 781 (1985) (Commission adopts window filing procedures for FM applications in order to force applicants to move quickly to bring service on line). As in these cases, Proctor's proposal would provide an obvious incentive for petitioners to create new service. Yet, as explained above, the Commission's choice of the best qualified applicant would not be compromised in the least.

The Commission additionally observed in rejecting Proctor's petition that a rulemaking petitioner's initiative allegedly does not necessarily provide a nexus to providing the best practicable service to the public or relate to that person's qualifications to be a licensee. In that respect, it is noted that the Comparative Policy Statement, which contains a discussion of the Commission's comparative hearing standards, contains no reference to awarding credit for initiating successful rulemaking proposals. However, the Commission recognized in that same Policy Statement that its comparative broadcast policy was not intended to be static or inflexible. 1 FCC 2d at 399. To the contrary, where, as here, there are suitable grounds for improving its policy scheme, such changes have been made in the past. See e.g. Addendum to Policy Statement on Comparative Hearings, 1 FCC 2d 667 (1966).

Currently, the Commission awards comparative credit for a number of factors, including local residence, past participation in civic affairs, previous broadcast experience, and minority and female status, with the last two factors presently undergoing review. Yet, aside from prior broadcast experience, none of the above factors has anything to do with broadcasting. It would seem obvious that acting as a rulemaking proponent to expand broadcast service to a community is more relevant to an applicant's comparative qualifications to be a broadcaster than membership in the PTA on one's sexual status. Rather than only awarding preferences for the structural attributes of an applicant (such as merely living in a community), and speculating that such non-broadcast factors will result in the best practicable service to the public, the Commission should include in its comparative scheme a factor which takes into consideration an applicant's prior actions in expanding service to the public.¹

ACCORDINGLY, for the above-stated reasons, Proctor respectfully urges the Commission to reconsider its action dismissing Proctor's April 27, 1987 rulemaking petition and instead initiate

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Proctor does not suggest that the Commission delete any of its current qualitative factors. Rather, Proctor advocates considering both non-broadcast structural attributes, such as local ownership and civic involvement, as well as prior broadcast actions which have served the public interest, such as successfully proposing new and expanded FM or television service.

a rulemaking proceeding to modify its Comparative Policy Statement to award a comparative preference to successful allocation rulemaking petitioners.

Respectfully submitted,

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